IN THE

# Supreme Court of the United States

October Term, 1951.

**No. 159 Miscellaneous.**

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*EX PARTE* GENE MITCHELL GRAY, LINCOLN ANDERSON BLAKENEY, JOSEPH HUTCH PATTERSON AND JACK ALEXANDER,
*Petitioners.*

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## RESPONSE TO RULE TO SHOW CAUSE.

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SHACKELFORD MILLER, JR.,
*U. S. Circuit Judge,*
LESLIE R. DARR,
*U. S. District Judge,*
ROBERT L. TAYLOR,
*U. S. District Judge.*
*Respondents.*

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WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

## SUBJECT INDEX.

## Cases and Statutes.

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The respondents, Shackelford Miller, Jr., Circuit Judge of the United States Court of Appeals for the Sixth Circuit; Leslie R. Darr and Robert L. Taylor, Judges of the United States District Court for the Eastern District of Tennessee, in compliance with the Rule to Show Cause, issued herein on October 15, 1951, why the petition for Writ of Mandamus should not be granted, make the following response to said Rule.

Following the filing by petitioners of a complaint in the United States District Court for the Eastern District of Tennessee against the Board of Trustees of the University of Tennessee and others, being Civil Action No. 1567 in said court, referred to in paragraph 5 of the petition for Writ of Mandamus herein, the

Honorable Xen Hicks, Chief Judge of the Court of Appeals for the Sixth Circuit, on February 20, 1951, acting under the provisions of Title 28 U. S. Code, Sections 2281 and 2284, designated the respondents as members of a three-judge court to hear and determine the said action or proceeding. Said respondents complied with said designation, convened and sat as said three-judge court in the U. S. District Court for the Eastern District of Tennessee in Knoxville, Tennessee, on March 13, 1951, and at said time held a hearing of approximately two hours in said proceeding.

After giving the matter full and careful consideration, said respondents, acting as said three-judge court, were of the opinion that the statutes of the State of Tennessee, under which the defendants acted, were not unconstitutional; *State ex rel. Michael* v. *Witham*, 179 Tenn. (15 Beeler) 250; *Plessy* v. *Ferguson*, 163 U. S. 537; *McCabe* v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151; *Gong Lum* v. *Rice*, 275 U. S. 78; *Berea College* v. *Kentucky*, 211 U. S. 45; that the issue involved was a question of alleged discrimination on the part of the defendants under the equal protection clause of the 14th Amendment, rather than the unconstitutionality of the statutory law of Tennessee; *Missouri* v. *Canada*, 305 U. S. 337; *Sipuel* v. *Board of Regents*, 332 U. S. 631; *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637; and that as such it was not one in which the three-judge court had jurisdiction to adjudicate the issue under the provisions of Title 28 U. S. Code, Sec. 2281; *Ex parte Bransford*, 310 U. S. 354; *Ex parte Collins*, 277

U. S. 565; *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 568-574; and on or about April 13, 1951, handed down an opinion to that effect which included reasons for such conclusion with citation of authorities relied upon, and entered an order by which the respondents, Shackelford Miller, Jr., and Leslie R. Darr, withdrew from said case and directed that the case proceed before the respondent, Robert L. Taylor, the U. S. District Judge in the District in which the action was filed. Said opinion and order are set out in full in Appendix A at pages 19 through 24 of the printed motion of the petitioners herein for leave to file their petition for Writ of Mandamus, and petition for a Writ of Mandamus and their brief in support of said motion and petition, to which reference is now made for a more complete statement of the case and the reasons for the ruling and the order referred to.

Thereafter, on April 20, 1951, the respondent, Robert L. Taylor, U. S. District Judge for the Eastern District of Tennessee, Northern Division, before whom and in which District and Division the proceeding was originally filed, acting separately and by himself as District Judge in said District and Division, ruled on the case, handing down an opinion in which it was held that petitioners had been denied the equal protection of the laws and that they were entitled to be admitted to the University of Tennessee. Said opinion is reported in 97 Federal Supplement 463, to which reference is now made for a more complete statement of the ruling. Although no injunction was issued by said District Judge at that time, the case was retained

on the docket for such orders as would appear proper thereafter. Petitioners have not requested the entry of any further order to enforce said ruling, although they have obtained by said ruling the right to the entry of such an order granting them the relief prayed for in said proceeding.

Respondents state that the petitioners appealed from the order and judgment of the three-judge court of April 13, 1951, to this Court pursuant to Title 28 United States Code, Sections 1253 and 2101(b). Such appeal is now pending before this Court as case No. 120. The question of the jurisdiction of said three-judge court in said proceeding can be reviewed and decided by this Court in considering and disposing of said appeal. *Wilentz* v. *Sovereign Camp,* 306 U. S. 573. If jurisdiction to hear the cause did not exist in said three-judge court, the ruling of said Court was not erroneous and these respondents should not be required to act further as said court in said matter. If jurisdiction to hear said cause did exist in said three-judge court, the ruling of said Court can be reversed and set aside by this Court in disposing of the appeal and said Court can then proceed to act further in the matter and consider the cause on its merits. Accordingly, petitioners have a complete and adequate remedy at law, making it unnecessary and inappropriate to proceed by application for Writ of Mandamus. *U. S. ex rel. Girard Trust Co.* v. *Helvering,* 301 U. S. 540, 544.

Errors of law in the discharge of a judicial function are not subject to be corrected through the Writ

of Mandamus. See *City of Paducah* v. *Shelbourne, U. S. District Judge*, No. 415 Misc., 341 U. S. 902. Although mandamus is an appropriate remedy to compel a judicial officer to act, *Ex parte Bransford*, 310 U. S. 354, 355, it is not the function of the writ to compel an adjudication in a particular way, and may not be used as a substitute for an appeal, in cases where action has been taken. *I. C. C.* v. *United States*, 289 U. S. 385, 393-394. See *U. S. ex rel. Chicago, etc.*, v. *I. C. C.*, 294 U. S. 50, 61-63.

Wherefore, respondents, having fully responded to the Rule to Show Cause, respectfully pray that the Writ of Mandamus prayed for herein by said petitioners be dismissed, and for all other appropriate relief to which they may be entitled.

SHACKELFORD MILLER, JR.,
*U. S. Circuit Judge.*

LESLIE R. DARR,
*U. S. District Judge.*

ROBERT L. TAYLOR,
*U. S. District Judge.*
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